

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>NICOLE R. HORN, as Executrix of the Estate of Theresa Smith,</b>	:	<b>CIVIL ACTION NO. 1:12-cv-1556</b>
	:	
	:	
<b>Plaintiff,</b>	:	<b>(Chief Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,</b>	:	
	:	
<b>Defendant.</b>	:	

**ORDER**

AND NOW, this 4th day of November, 2013, upon consideration of the report and recommendation (Doc. 31) of Chief Magistrate Judge Martin C. Carlson, recommending that plaintiff's motion for summary judgment (Doc. 11) be granted and defendant's motion for summary judgment (Doc. 16) be denied, and, after an independent review of the record, and the court observing that there are no material facts in dispute between the parties, and noting that defendant filed objections<sup>1</sup> (Doc. 32) to the report on October 8, 2013, and the court finding Judge Carlson's analysis to be thorough, well-reasoned, and fully supported by the record, and the court further finding defendant's objections to

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<sup>1</sup> Where objections to a magistrate judge's report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. Supinski v. United Parcel Serv., Civ. A. No. 06-0793, 2009 WL 113796, at \*3 (M.D. Pa. Jan. 16, 2009) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). "In this regard, Local Rule of Court 72.3 requires 'written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.'" Id. (citing Shields v. Astrue, Civ. A. No. 07-417, 2008 WL 4186951, at \*6 (M.D. Pa. Sept. 8, 2008)).

be without merit and squarely addressed by Judge Carlson's report,<sup>2</sup> it is hereby

ORDERED that:

1. The report (Doc. 31) of Chief Magistrate Judge Carlson recommending the court grant plaintiff's motion (Doc. 11) for summary judgment and deny defendant's motion (Doc. 16) for summary judgment is ADOPTED in its entirety.
2. Plaintiff's motion (Doc. 11) for summary judgment is GRANTED and defendant's motion (Doc. 16) for summary judgment is DENIED.
3. Judgment is entered in favor of Nicole R. Horn, as the Executrix of the Estate of Theresa Smith, and against State Farm Mutual Automobile Insurance Company in the amount of \$85,000.
4. The Clerk of Court is DIRECTED to close this case.

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania

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<sup>2</sup> Defendant takes issue with the report and recommendation to the extent that Judge Carlson distinguished the Third Circuit's decision in Nationwide Mutual Insurance Co. v. Buffetta, 230 F.3d 634 (3d Cir. 2000) from the instant matter. Upon a review of the record and the relevant decisional law, the court fully agrees with Magistrate Judge Carlson's analysis and ultimate conclusion that Buffetta is factually distinguishable from the matter *sub judice*. (See Doc. 31 at 9-19).